

DIAA Board of Directors' Meeting Minutes
August 12, 2010 – 9:00 a.m.
Collette Building

I. Opening

A. Call to Order

The meeting was called to order at 9:00 a.m. by DIAA Chairperson Gerald Kobasa.

B. Roll Call

The following DIAA Board members were present: Gerald Kobasa, Michael Wagner, Curtis Bedford, Eugene Montano, Edna Cale, Craig Eliassen, Laura Leone, Catherine Marvel, Harvey Hyland, Dianne Sole, Susan Coffing, Teresa Taylor, Pam Love, Woody Long, Darryl Parson, Dr. Mark Holodick, Randall O'Neal, Ron Eby and Dr. Amelia Hodges. Paula Fontello, Deputy Attorney General and Kevin Charles, Executive Director were also in attendance. Dr. Hawtof was not in attendance.

C. Approval of Agenda

Mr. Eby made a motion to approve the agenda. The motion was seconded by Ms. Cale and carried unanimously.

D. Approval of Minutes of July 8, 2010 Board of Directors' Meeting

Ms. Cale made a motion to approve the minutes of the July 8, 2010 Board of Directors meeting. The motion was seconded by Mr. Parson and carried unanimously.

E. DIAA Financial Report

Mr. Charles reviewed highlights of the July budget report and commented on the income and expenses and stated that at this time we are in the red and stated that he does have detailed financial reports. Ms. Leone made a motion to approve the financial report. The motion was seconded by Mr. Montano and carried unanimously.

III. Action Items

A. Approval of Tournament Sanctions

Mr. Charles commented that all the sanctioned events meet the all the necessary criteria. Mr. Eby made a motion to approve the sanctioned events. The motion was seconded by Mr. Montano and carried unanimously.

B. Request for Waiver of DIAA Reg. 1009.2.4 by Caravel for D. M.

Student and student's father were in attendance to present this request. Student's father requested a closed hearing. Mr. Eliassen made a motion to go into executive session for the purposes of protecting the pupil file as an exception to the Freedom of Information Act. The motion was seconded by Ms. Cale and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello explained that DIAA is a 20 member Board and has 19 voting members. Ms. Fontello further explained that the law requires the affirmative vote of a majority of the voting members present in order to pass a waiver request. Ms. Fontello explained that there are 17 voting members participating and present to consider this matter. The parties confirmed that they understood and wished to proceed. All persons participating in this hearing were sworn in. All the documentation was made part of the record and in addition to the testimony given the Board considered and relied upon the written documentation provided.

Mr. Wagner made a motion to go into deliberation. The motion was seconded by Ms. Marvel and carried unanimously. Dr. Holodick made a motion to come out of deliberation. The motion was seconded by Mr. Eliassen and carried unanimously. Mr. Wagner made a motion to come out of executive session. The motion was seconded by Dr. Sole and carried unanimously.

Ms. Taylor made a motion to deny the request for waiver of DIAA Reg. 1009.2.4 for lack of evidence supporting a hardship. The motion was seconded by Mr. Eby and carried by a vote of 14 yes (Kobasa, Wagner, Bedford, Montano, Cale, Leone, Marvel, Hyland, Sole, Taylor, Long, Holodick, O'Neal, and Eby), 3 – no (Eliassen, Parson, and Coffing).

The Board recessed at 10:50 a.m. and reconvened at 11:10 a.m.

D. Appeal of Executive Director Eligibility Ruling on B.L. by Sussex Central

Mr. Kobasa and Mr. Long recused themselves. Ms. Fontello explained since the chair was recusing and the vice chair was filling in she was going to be helping with the procedure. Mr. Bradley Layfield; representing Sussex Central High School, William Lewis; father of student were in attendance to present this request. Ms. Fontello stated that this is an appeal of the eligibility decision and not a waiver request. It was clarified that although normally a waiver request and an appeal of an eligibility determination would be considered at the same time, the Student was not available for the hearing. The School and Father opted to proceed with the appeal. Ms. Fontello explained that DIAA is a 20 member Board and has 17 voting members. Ms. Fontello further explained that the law requires the affirmative vote of a majority of the voting members present in order to pass a waiver request. Ms. Fontello explained that there are 16 voting members participating and present to consider this

matter. The parties confirmed that they understood and wished to proceed. All persons participating in this hearing were sworn in. Mr. Charles explained the process in reaching an eligibility determination. He explained the Student's circumstances and explained that the Student moved and the question was raised if the change of residence exception in the transfer rule applied. Mr. Charles indicated that the change of residence exception did not apply under the facts of this case. He further explained that student is ineligible because Student did not move from the sending school's attendance zone. Mr. Charles also confirmed that the student entered into the attendance zone of the receiving school. He further explained that because Sussex Tech is a county wide school and they moved from a house in Sussex County in the Cape Henlopen District to a house in the Indian River District they did not leave the sending school's attendance zone. Student was still eligible to remain at the sending school. Mr. Charles stated that the only clear interpretation that could be made given the wording of the regulation was that the student was ineligible. Mr. Charles stated that he notified the principal at Sussex Central High School. On cross examination, Mr. Layfield asked Mr. Charles if the term attendance zone was legally defined in the regulation or in state law. Mr. Charles stated that the term attendance zone was not defined in DIAA regulation and that he could not speak for Delaware Code. Mr. Layfield then asked if all schools have an attendance zone. Mr. Charles stated that all public schools and vocational schools have an attendance zone. Mr. Charles stated that private and parochial schools have an undefined attendance zone as they can draw students from anywhere within the state or outside the state. Mr. Layfield explained that he felt that Brandon should be eligible as his father have established a new legal residence in their attendance zone. Mr. Layfield explained his basis of the appeal and the inequity of the regulation and stated the Board should look at the each situation differently. Mr. Layfield coccceeded that under a strict reading of 1009.2.4.4.3 the change of residence exception does not apply to this case. Dr. Pat Savini; the Superintendent in Sussex Technical School District, John Demby; Sussex Tech Principal, and Joe Thompson; Sussex Tech Athletic Director were present for the hearing. Sussex Tech representatives were given the opportunity to offer information.

Mr. Parson made a motion to go into deliberation. The motion was seconded by Dr. Holodick and carried unanimously. Ms. Taylor made a motion to come out of deliberation. The motion was seconded by Mr. Eby and carried unanimously.

Mr. Layfield and Board members asked additional questions. Discussion ensued regarding the history and intent of the regulation, how it applies to this situation and whether the strict interpretation of this regulation creates disadvantage to traditional public schools.

Ms. Marvel made a motion to go into deliberation. The motion was seconded by Ms. Leone and carried unanimously. Ms. Cale made a motion to come out of deliberation. The motion was seconded by Mr. Montano and carried unanimously. Mr. Eby made a motion to affirm the executive director's decision. The motion was seconded by Ms. Coffing and carried by a vote of 12 – yes (Wagner, Bedford, Leone, Hyland, Sole,

Coffing, Taylor, Love, Parson, Holodick, O'Neal, and Eby) and 4 – no (Montano, Cale, Eliassen, Marvel). Board members also requested that Mr. Charles present the matter to the Rules and Regulations Committee to consider the regulation and the arguments presented.

E. Request for Waiver of DIAA Reg. 1009.2.4 by Salesianum for C.P.

Dr. Holodick recused himself from this hearing. Student and student's parents and Mark Holodick; superintendent of the Brandywine school District were in attendance to present this request. Student's mother requested a closed hearing. Mr. Eby made a motion to go into executive session for the purposes of protecting the pupil file as an exception to the Freedom of Information Act. The motion was seconded by Ms. Cale and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello explained that DIAA is a 20 member Board and has 19 voting members. Ms. Fontello further explained that the law requires the affirmative vote of a majority of the voting members present in order to pass a waiver request. Ms. Fontello explained that there are 14 voting members participating and present to consider this matter. The parties confirmed that they understood and wished to proceed. All persons participating in this hearing were sworn in. All the documentation was made part of the record and in addition to the testimony given the Board considered and relied upon the written documentation provided.

Mr. Parson made a motion to come out of executive session. The motion was seconded by Ms. Coffing and carried unanimously.

Mr. Wagner made a motion to approve the waiver based on the hardship presented. The motion was seconded by Mr. Parson and carried unanimously.

IV. Executive Director Report

B. Presentation of Sportsmanship Awards

Mr. Charles and Mr. Kobasa presented the Sportsmanship Awards.

III. Action Items

G. Request for Waiver of DIAA Reg. 1008.4.3 Maximum Games Schedules by Red Clay School District

Ms. Fontello explained that because this was not a student eligibility waiver the procedure was a little different. Ms. Fontello advised the Board on the difference and that

as the rules permitted, a representative from the District would present the basis for the waiver request. Mike Oleksy, athletic director from Conrad Middle School in the Red Clay School District was in attendance to present this request. Ms. Fontello explained that DIAA is a 20 member Board and has 19 voting members. Ms. Fontello further explained that the law requires the affirmative vote of a majority of the voting members present in order to pass a waiver request. Ms. Fontello explained that there are 15 voting members participating and present to consider this matter. Mr. Oleksy confirmed that he understood and wished to proceed. All persons participating in this hearing were sworn in. Mr. Oleksy explained that there are six middle schools in Red Clay School District that have had a middle school sports program since 2000. Mr. Oleksy stated that the middle schools usually just play the schools in the district but that they would like to play schools outside of the district. Mr. Oleksy stated that by DIAA regulations their schools can only play eleven games in most sports. Mr. Oleksy was asking for relief from the Maximum Game Schedules limits so that they could play each school in their District twice during the season, other schools outside the district and, so that they could play a district championship game in each sport. Mr. Charles testified and explained the regulation and the temporary reduction of maximum number of games. He commented that at the high school level the maximum game schedule is exclusive of conference championships but that the same provision does not exist at the middle school level. Mr. Charles stated that historically the Board has not supported championships at the middle school level. Mr. Charles informed the new members of the Board that DIAA reduced the maximum game limit in middle schools by 10% . Mr. Charles stated that we are in the second year of that policy and that the policy will be reevaluated at the end of this year. Mr. Wagner commented that the schools were polled and wanted to stay with the policy for one more year. Mr. Charles stated that as a result of Red Clay District's request that all their schools play a 10 games district schedule and then four of the schools would then go into a two game playoff. Mr. Charles stated that as a result two of the schools would play 11 games and two would play 12 games. Mr. Eby made a motion to deny the request because the District did not establish special circumstances warranted the waiver and the circumstances remained unchanged.. The motion was seconded by Mr. Montano. Mr. Wagner commented that there should be a meeting for all middle schools to discuss this. The motion carried unanimously.

J. Modification of NFHS Football Rules for Alternative Officials Pants

Mr. Neubauer explained that under the NFHS officials manual for football the officials associations are allowed to request from their state association the option to wear black officiating shorts or black long lined pants as weather dictates. Mr. Neubauer stated that both football officials associations are 100% in support. Mr. Neubauer stated that DIAA has asked that when a crew goes to the field that they are dressed alike. Mr. Charles stated that this is an NFHS approved state modification and Delaware would still be in compliance with NFHS playing rules if the Board approved this request. Ms. Coffing made a motion to approve this request. The motion was seconded by Mr. Montano and carried unanimously.

F. Consideration of Interim Waivers by Executive Director

1. DIAA Reg. 1009.2.7 by Cape Henlopen for B. B.

Ms. Fontello stated that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the pupil file. Ms. Coffing made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Mr. Montano and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello stated that this request is being done under the interim waiver process and that there is a signed consent from the student's parent in this case in order to proceed under these modified procedures. Ms. Fontello stated that this full hearing is scheduled for the September 16 meeting should it be necessary. Ms. Fontello explained that Mr. Charles has granted two interim waivers in this hearing one allowing the student to participate and the second to allow the student and parent not to appear. Mr. Charles was sworn in. The waiver packet and letter sent to the parents from Mr. Charles was made part of the record. Evidence was taken.

Ms. Taylor made a motion to come out of executive session. The motion was seconded by Mr. Montano and carried unanimously. Dr. Holodick made a motion to grant the waiver based on the evidence a hardship was established and to approve the interim waivers granted by the executive director. The motion was seconded by Mr. Eliassen and carried unanimously. Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for September 16 is cancelled.

2. DIAA Reg. 1009.2.7 by Sussex Tech for D. C.

Ms. Fontello stated that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the pupil file. Ms. Taylor made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Mr. Montano and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello stated that this request is being done under the interim waiver process and that there is a signed consent from the student's parent in this case in order to proceed under these modified procedures. Ms. Fontello stated that this full hearing is scheduled for the September 16 meeting should it be necessary. Ms. Fontello explained that Mr. Charles has granted two interim waivers in this hearing one allowing the student to participate and the second to allow the

student and parent not to appear. It was confirmed that Mr. Charles is still under oath. The waiver packet and letter sent to the parents from Mr. Charles was made part of the record. Evidence was taken.

Mr. Wagner made a motion to come out of executive session. The motion was seconded by Mr. Montano and carried unanimously. Mr. Wagner made a motion to grant the waiver request based on the evidence a hardship was established and approve the interim waivers granted by the executive director. The motion was seconded by Mr. Montano and carried by a vote of 14 yes (Wagner, Montano, Cale, Eliassen, Leone, Marvel, Coffing, Taylor, Love, Long, Parson, Holodick, and Eby) 0 no, and 1 – abstention (Hyland). Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for September 16 is cancelled.

3. DIAA Reg. 1009.2.4 by Smyrna HS for K. W.

Ms. Fontello stated that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the pupil file. Ms. Cale made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Ms. Taylor and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello stated that this request is being done under the interim waiver process and that there is a signed consent from the student's parent in this case in order to proceed under these modified procedures. Ms. Fontello stated that this full hearing is scheduled for the September 16 meeting should it be necessary. Ms. Fontello explained that Mr. Charles has granted two interim waivers in this hearing one allowing the student to participate and the second to allow the student and parent not to appear. It was confirmed that Mr. Charles is still under oath. The waiver packet and letter sent to the parents from Mr. Charles was made part of the record. Evidence was taken.

Mr. Montano made a motion to come out of executive session. The motion was seconded by Ms. Marvel and carried unanimously. Mr. Montano made a motion to approve both interim waivers based on the financial hardship. The motion was seconded by Ms. Marvel and carried by a vote of 14 – yes (Kobasa, Wagner, Montano, Cale, Eliassen, Leone, Marvel, Hyland, Coffing, Taylor, Love, Long, Parson, Holodick), 0 – no, and 1 abstention (Eby). Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for September 16 is cancelled.

4. DIAA Reg. 1009.2.4 by A. I. DuPont for A. S.

Ms. Fontello stated that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the pupil file. Mr. Eby made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The

motion was seconded by Ms. Love and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello stated that this request is being done under the interim waiver process and that there is a signed consent from the student's parent in this case in order to proceed under these modified procedures. Ms. Fontello stated that this full hearing is scheduled for the September 16 meeting should it be necessary. Ms. Fontello explained that Mr. Charles has granted two interim waivers in this hearing one allowing the student to participate and the second to allow the student and parent not to appear. It was confirmed that Mr. Charles is still under oath. The waiver packet and letter sent to the parents from Mr. Charles was made part of the record. Evidence was taken.

Mr. Montano made a motion to come out of executive session. The motion was seconded by Ms. Leone and carried unanimously. Mr. Montano made a motion to grant the waiver request based on the evidence a hardship was established and to approve both interim waivers for financial hardship. The motion was seconded by Ms. Coffing and carried unanimously. Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for September 16 is cancelled.

5. Request for Waiver of DIAA Reg. 1009.2.4 by RLCA for B. N.

Ms. Fontello stated that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the pupil file. Mr. Hyland made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Ms. Taylor and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello stated that this request is being done under the interim waiver process and that there is a signed consent from the student's parent in this case in order to proceed under these modified procedures. Ms. Fontello stated that this full hearing is scheduled for the September 16 meeting should it be necessary. Ms. Fontello explained that Mr. Charles has granted two interim waivers in this hearing one allowing the student to participate and the second to allow the student and parent not to appear. It was confirmed that Mr. Charles is still under oath. The waiver packet and letter sent to the parents from Mr. Charles was made part of the record. Evidence was taken.

Ms. Cale made a motion to come out of executive session. The motion was seconded by Mr. Montano and carried unanimously. Ms. Cale made a motion to grant the waiver based on the evidence a hardship was established and to approve both interim waivers. The motion was seconded by Mr. Hyland and carried by a vote of 13 – yes (Kobasa, Montano, Cale, Eliassen, Leone, Marvel, Hyland, Coffing, Love, Long, Parson, Holodick, and Eby) 0 – no, 1 – abstention (Taylor). Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for September 16 is cancelled.

H. Concussion Protocol for NFHS Rules Change

Mr. Charles reviewed the DIAA Concussion Protocol and stated that this is a result of new medical evidence that suggests that even minor concussions can have a long term impact on the health of our students and a rules change by the NFHS authorizing officials to remove a player with concussion symptoms. Mr. Charles stated that Delaware adopted a regulation that requires an approval from a MD/DO to return to play following a concussion or loss of consciousness in 2008. Mr. Charles stated that we did not have a protocol to deal with sideline management of concussions when a student is removed from a game by an official. Mr. Charles stated that the NFHS gave some guidance to State Associations for some suggested concussion management. Mr. Charles commented that he would like the Board to consider the concussion protocol. The Board made two minor modifications to the proposed policy. Mr. Montano made a motion to approve the Concussion Protocol. The motion was seconded by Ms. Cale and carried unanimously.

I. Membership Request by Newark Charter School

Mr. Charles stated that the Newark Charter School has been in existence since 2001 and are now requesting membership into DIAA. Mr. Charles stated that their sports program consists of cross country, soccer, basketball, volleyball, and softball. Mr. Charles stated that the Newark Charter School is a public school and that the Delaware Law states that all public secondary and middle schools that participate in interscholastic athletics must be a member of DIAA. Mr. Eliassen made a motion to approve membership for Newark Charter School. The motion was seconded by Ms. Taylor and carried unanimously.

IV. Executive Director Report

A. Final FY 10 Budget Report

Mr. Charles stated that he sent by email the final report for FY 10 and would answer any questions the Board may have.

V. Other

VI. Public Comment

None.

VII. Adjournment

Mr. Hyland made a motion to adjourn at 3:10 p.m. The motion was seconded by Mr. Montano and carried unanimously.

Tina Hurley